

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LINDA JANN LEWIS, MADISON LEE, ELLEN
SWEETS, BENNY ALEXANDER, GEORGE
MORGAN, VOTO LATINO, TEXAS STATE
CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, AND TEXAS
ALLIANCE FOR RETIRED AMERICANS,

Plaintiffs,

v.

RUTH HUGHS, in her official capacity as the
Texas Secretary of State,

Defendant.

Civil Action No. 5:20-cv-00577-OLG

Related to *Gloria et al. v. Hughs et al.*,
No. 5:20-cv-00527

**PLAINTIFFS' NOTICE OF SUMMARY AFFIRMANCE AND REQUEST FOR
BRIEFING SCHEDULE AND HEARING**

This notice serves to inform the Court of the Fifth Circuit's summary affirmance disposing of the Secretary's interlocutory appeal of the order denying her motion to dismiss on sovereign immunity grounds. *See* Ex. A, Order Granting Mot. for Summ. Aff. Plaintiffs request that the Court set an expedited briefing schedule on their pending motion for preliminary injunction, and for a hearing on that motion to take place before October 2, 2020.

Plaintiffs filed this case challenging four provisions of the Texas Election Code that burden their right to vote in the context of COVID-19, ECF 1, and on June 22 they filed a motion for preliminary injunction to avoid irreparable injury in the November election, ECF 20, 21. On the Secretary's request, ECF 25, this Court ordered expedited discovery before the Secretary's deadline to respond to the preliminary injunction motion, ECF 30. During that discovery period, the Court issued its order denying the Secretary's motion to dismiss, in part concluding that the

Secretary was not immune from suit in light of *Ex parte Young*. ECF 31 at 14-17. The Secretary filed a notice of interlocutory appeal of that order in the Fifth Circuit, and on August 20 this Court stayed the case pending disposition of the interlocutory appeal. ECF 37.

Plaintiffs filed an emergency motion in the Fifth Circuit seeking summary affirmance because the appeal lacked merit or, in the alternative, dismissal of the interlocutory appeal for frivolousness. Today, the Fifth Circuit filed its order summarily affirming this Court's denial of the Secretary's motion to dismiss on sovereign immunity grounds. Ex. A, Order Granting Mot. for Summ. Aff. The Fifth Circuit held that "no substantial question exists in this matter with respect to whether the Texas Secretary of State bears a sufficient connection to the enforcement of the Texas Election Code's vote-by-mail provisions to satisfy *Ex parte Young*'s 'some connection' requirement." *Id.* at 2.

After the Fifth Circuit's summary affirmance, this case is again before the district court. Still outstanding is Plaintiffs' preliminary injunction motion, to which the Secretary has yet to respond. Because the preliminary injunction motion seeks relief to be implemented before the November 3 election, Plaintiffs request that this Court enter an expedited schedule for the parties to finish briefing the preliminary injunction motion and propose the following:

Deadline	Date
Deadline to conclude expedited discovery	September 11
Deadline for the Secretary to file response to preliminary injunction motion	September 18
Deadline for Plaintiffs to file reply in support of preliminary injunction motion	September 23
Hearing on preliminary injunction motion	A date between September 24 and October 2

Should it be helpful to the Court, Plaintiffs are available for a status conference at any time on Tuesday, September 8, to discuss the schedule of subsequent proceedings.

Dated: September 4, 2020

Respectfully submitted,

/s/ Kevin J. Hamilton

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**Pro hac vice applications pending*

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on September 4, 2020, and that all counsel of record were served by CM/ECF.

/s/ Kevin J. Hamilton